

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MICHIGAN HEAD & SPINE  
INSTITUTE, P.C.,

Plaintiff,

v.

USDC Case No: 2:18-cv-10902

Hon. \_\_\_\_\_

SAFECO INSURANCE  
COMPANY OF ILLINOIS

State Court Case No. 2018-163354-NF

Hon. Nanci J. Grant

Defendant.

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Sean F. Kelly (P59975)  
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Daniel P. Tighe  
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One International Place  
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**NOTICE OF FILING REMOVAL  
NOTICE OF REMOVAL TO FEDERAL COURT  
VERIFICATION  
CERTIFICATE OF SERVICE**

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**NOTICE OF FILING REMOVAL**

TO: Sean F. Kelly, Esq.  
28470 W. 13 Mile Rd., Ste 300  
Farmington Hills, MI 48334

Oakland County Circuit Court  
1200 N. Telegraph Rd.  
Pontiac, MI 48340

PLEASE TAKE NOTICE that Defendant SAFECO INSURANCE COMPANY OF ILLINOIS has this day filed a Notice of Removal to Federal Court, a copy of which is attached hereto, in the office of the Clerk of the United States District Court, Eastern District of Michigan, Southern Division.

Dated: March 19, 2018

/s/ Jennifer B. Salvatore  
\_\_\_\_\_  
Jennifer B. Salvatore (P66640)  
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**NOTICE OF REMOVAL TO FEDERAL COURT**

TO: Clerk of the Court, Eastern District of Michigan  
Sean F. Kelly, Esq.

Pursuant to 28 U.S.C. §§ 1332 and 1441, Safeco Insurance Company of Illinois (“Safeco”) hereby removes the action captioned Michigan Head & Spine Institute, P.C. v. Safeco Insurance Company of Illinois, Docket No. 2018-163354-NF (“State Court Action”), now pending in the Oakland County Circuit Court. In support of removal, Safeco states as follows:

1. On or about January 23, 2018, the plaintiff in the State Court Action – Michigan Head & Spine Institute, P.C. (“MHSI”) – filed a complaint against Safeco (“Complaint” or “Compl.”). The Complaint was served on Safeco for the first time on February 23, 2018.

2. MHSI alleges that Safeco has repeatedly failed to reimburse MHSI for medical services covered by the Personal Injury Protection (“PIP”) provisions in Safeco’s automobile insurance policies, as required by the Michigan No-Fault Act, M.C.L. § 500.3101, *et. seq.* (Compl. at ¶¶ 1, 13.) MHSI seeks to recover the “full payment” for charges listed in an attached spreadsheet as well as “all no-Fault Penalties to which it is entitled.” (*Id.*, ¶ 1 and Ex. A.) Exhibit A to the Complaint is the list of invoices that MHSI claims are due and owing. The total amount allegedly owed, as shown on that spread sheet, is \$69,934.38. (Compl. Ex. A, p.2.)<sup>1</sup>

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<sup>1</sup> In a related case pending before this Court, MHSI v. Liberty Mutual Ins. Co. et al, Case No. 2:17-cv-13815-SFC-DRG, MHSI asserts the same substantive claims against Safeco’s sister companies, Liberty Mutual Insurance Company and Liberty Mutual Fire Insurance Company. The defendants in that case (who are represented by the undersigned) assert the same defenses and counterclaims as Safeco will assert in this matter.

3. MHSI also seeks to recover attorney's fees pursuant to M.C.L. § 500.3148, which will add to the already sizeable damages it is alleging. (Compl. ¶ 18.)

4. Under 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

5. Under 28 U.S.C. § 1332(a)(1), this Court has original jurisdiction over an action in which (1) there is complete diversity between the parties, and (2) the amount in controversy exceeds \$75,000.

6. Both criteria are satisfied here. First, there is complete diversity between the parties. MHSI is a corporation organized under the laws of Michigan, and its principal place of business is located in Oakland County, Michigan. (See Compl. at ¶ 2.) Accordingly, for purposes of diversity jurisdiction, MHSI is a citizen of Michigan and no other state.

7. By contrast, Safeco is a corporation organized under Illinois with a principal places of business located at 175 Berkeley St., Boston MA. (See Compl. ¶ 3, alleging that Safeco is a 'foreign corporation'.) There is, as a result, complete diversity between the parties.

8. Second, the amount in controversy exceeds \$75,000.

9. Before considering fees and interest, the baseline amount of MHSI's damages is \$69,943.38. See e.g., Kovacs v. Chesley, 406 F.3d 393, 395 (6th Cir. 2005)(for purposes of determining amount in controversy, “the sum claimed by the plaintiff controls if the claim is apparently made in good faith” quoting St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288 (1938)).

10. In addition to the alleged underpayments, MHSI is seeking “punitive” interest under MCL 500.3142 (Compl. ¶ 17), which is also included in amount in controversy calculations. See Haggard v. Allstate Prop. & Cas. Ins. Co., No. 13-12779, 2013 WL 12181716, at \*4 (E.D. Mich. Sept. 12, 2013). M.C.L. § 500.3142 provides for 12% penalty interest per annum. Mathis v. Encompass Ins. Co., No. 08-CV-12838, 2008 WL 4279357, at \*2 (E.D. Mich. Sept. 15, 2008) (citations omitted). Applied here, 12% simple interest per annum on \$69,943.38 amounts to \$8393 per year. Since the dates of service (and thus, dates of alleged breaches) were all in the first half of 2017 (see Comp. Ex. A), MHSI's claim for interest easily exceeds \$5056.62, and thus, put its alleged damages well over \$75,000.

11. Moreover, in addition to its claims for damages and interest, the amount in controversy calculation must also include MHSI's claim for statutory attorneys fees. See Williamson v. Aetna Life Ins. Co., 481 F.3d 369, 377 (6th Cir. 2007) (statutory attorneys fees to be considered in calculating amount in

controversy.) MHSI will likely incur fees equal to at least one-third of the alleged underpayments, thus putting the amount in controversy well in excess of \$75,000.

12. Pursuant to 28 U.S.C. § 1446(b)(1), the Defendant's notice of removal is timely as it is filed within thirty (30) days of service of the Complaint.

13. There are no other defendants whose consent is required.

14. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Oakland County Circuit Court.

15. Pursuant to 28 U.S.C. § 1446(a), the Defendant has attached the Complaint to this notice as Exhibit A. It also attached the summons and notice of service as Exhibit B.

**WHEREFORE**, the Defendant respectfully requests that the above action now pending against them in the Oakland County Circuit Court be removed therefrom to this Court.

Respectfully submitted,

Dated: March 19, 2018

/s/ Jennifer B. Salvatore  
Jennifer B. Salvatore (P66640)  
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/s/ Daniel P. Tighe

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*Attorneys for Safeco Insurance Company of  
Illinois*

### **CERTIFICATE OF SERVICE**

I certify that the foregoing document was served by U.S. Mail, first-class postage pre-paid, and by electronic service on the following counsel on March 19, 2018:

Sean F. Kelly, Esq.  
Miller & Tischler, P.C.  
28470 W. 13 Mile Rd., Suite 300  
Farmington Hills, MI 48334

Dated: March 19, 2018

*/s/ Jennifer B. Salvatore*  
\_\_\_\_\_  
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**VERIFICATION**

JENNIFER B. SALVATORE, first being duly sworn, states that she is the attorney for Defendant SAFECO INSURANCE COMPANY OF ILLINOIS and

that the foregoing Notice of Removal to Federal Court is true in substance and in fact to the best of her knowledge, information, and belief.

Dated: March 19, 2018

/s/ Jennifer B. Salvatore  
Jennifer B. Salvatore (P66640)  
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